

USAWC STRATEGY RESEARCH PROJECT

THE BEST DEFENSE IS A GOOD OFFENSE: PREEMPTION, RAMIFICATIONS FOR THE
DEPARTMENT OF DEFENSE

by

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ABSTRACT

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This paper seeks to identify the implications of the President's emerging anticipatory self-defense doctrine for the Department of Defense. Specifically, the paper employs just war theory and strategic military theory to examine decision criteria-for preemptive and preventative military actions at the strategic level, while utilizing the ends-ways-means paradigm for strategy analysis. After offering several definitions, the paper explores the theoretical foundations of anticipatory self-defense. A brief survey of historical examples of preventative war, preemptive war and preventative attack sets the stage for analysis. Japan's conquest in the Pacific (1941) illustrates a preventative war that was antithetical to American values and while extreme it identifies the risk that rogue nations, inspired by U.S. policy, will use anticipatory self-defense as an excuse for aggression. The last two examples, the Six-Day War (1967) and the Osirak Raid (1982) manifest preemptive and preventative military operations closer to the spirit of the President's new policy. The paper proposes decision criteria for anticipatory self-defense and identifies three likely preemption types (generic courses of action, or "ways"). These types are signaled preemption/prevention, unannounced preemption/prevention, and clandestine preemption/prevention. The paper examines means and offers recommendations for the Department of Defense. Threats and risks are addressed throughout. The paper concludes that decision criteria for anticipatory self-defense possess utility and it recommends the 'Just War Framework' as a start point for the development of such criteria. While not intended to defend anticipatory self-defense, the paper concludes that there are instances that justify preemption and prevention. This study contributes to a small body of critical thought on America's emerging preemptive strategy. Moreover, it may provide a start point for additional studies on the topic.

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THE BEST DEFENSE IS A GOOD OFFENSE: PREEMPTION, RAMIFICATIONS FOR THE DEPARTMENT OF DEFENSE

If we wait for threats to fully materialize, we will have waited too long....Our security will require transforming the military you will lead -- a military that must be ready to strike at a moment's notice in any dark corner of the world. And our security will require all Americans to be forward-looking and resolute, to be ready for preemptive action when necessary to defend our liberty and to defend our lives. ¹ —George W. Bush

In the wake of al-Qaeda's 9/11 attacks on the World Trade Center and Pentagon, America's security policy underwent significant changes, particularly in regard to anticipating the acts of terrorists and their supporters. On September 14, 2001, Congress authorized the use of force against those who planned, perpetrated or harbored the 9/11 terrorists to prevent future strikes against the United States.² The President, in his January 29, 2002 State of the Union address, warned that the United States would not allow aggressors to strike first.³ He reiterated his case for preemption in a commencement address to the West Point Class of 2002.⁴ Finally, the National Security Strategy (NSS) of September 2002 included preemption as a course of action.⁵

Anticipatory defense is not new to American strategic thinking. However, thinking about preemptive or preventive strategies and executing them are two different things. While reserving the right to preempt or prevent, the United States rarely exercised those options. In the few cases of American preemption its operations have been small in scale, for limited objectives, often clandestine and usually followed some provocation. US leaders generally considered the idea of striking first incompatible with American ideals and thus not a legitimate course of action.⁶

The President's new strategy is different because it explicitly declares that the United States will execute preemptive military operations when necessary. His strategy includes preventative actions to eliminate threats before they emerge, that is before threats are imminent.⁷ He implies that the United States, in situations short of last resort, might employ preventative attacks or preventative war. Moreover, his statements suggest that America will hold other nations responsible for the acts of terrorists operating within or from their territory and that it reserves the option to preempt or prevent within those states. While other nations have employed anticipatory strategies, the United States has never before declared such a doctrine. The President has added a new course of action to America's National Military Strategy and its armed forces must respond.

This Paper seeks to identify implications of the President's emerging preemptive doctrine for the Department of Defense (DOD). Specifically, the paper employs just war and strategic military theory to model decision criteria for anticipatory self-defense, while utilizing the ends-ways-means paradigm for strategy analysis. After offering several definitions, the paper explores the theoretical foundations of anticipatory defense. A brief survey of historical examples of anticipatory defense sets the stage for analysis. After identifying three likely preemption types, the paper addresses means, as well as recommendations for DOD. Threats and risks are addressed throughout. While this paper is not intended to justify anticipatory self-defense, it does conclude that there are instances that justify such action. This study hopes to contribute a start point for additional research on the topic.

DEFINITIONS

Anticipatory self-defense or striking an enemy before that enemy consummates his attack will take one of four forms. The fundamental discriminators in these forms are the concepts of imminent verses inevitable threats and attacks verses war. For the purpose of argument, this paper employs the following definitions.

- **Preemptive Attack:** An attack or raid initiated on the basis of incontrovertible evidence that an enemy attack is imminent.
- **Preemptive War:** A war initiated on the basis of expectation and/or evidence that an enemy attack is imminent.
- **Preventative Attack:** An attack or raid initiated on the belief that the threat of an attack, while not imminent, is inevitable, and that to delay would involve great risk.
- **Preventative War:** A war initiated on the belief that armed conflict, while not imminent, is inevitable, and that to delay would involve great risk.⁸

As suggested earlier, President Bush, as well as advocates and critics of his new policy often mix all four forms into the term "preemption" without drawing needed distinctions. Since the word "imminent" appears in each form it is worth reviewing the definition of 'imminent'.

...to project, threaten, ... ready to take place;...hanging threateningly over one's head...danger of being run over...⁹

Temporally, imminent appears to be a subjective call. For example, combat forces set in attack positions could remain in such a status for long periods of time. Thus, some divining of

the opponent's intent is necessary. Nonetheless, it helps to distinguish between forms of anticipatory defense. An imminent threat, ready to take place, is much closer in time than an inevitable one. An imminent threat has immediate ramifications if left unchecked.

The 2002 National Security Strategy states, "[The United States] must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries."⁴⁰ This statement is an effort to push the short time horizon associated with imminent to a more distant point in time to accommodate preventative action. Essentially, what the NSS indicates is the intent to execute preventative attacks. To define "imminent" as a matter of hours, days or weeks is illusory. In determining which threats are imminent there are no hard rules and the President perhaps in consultation with Congress will have to discriminate on a case by case basis supported by the best intelligence available.

Preemptive attacks possess limited objectives or discrete targets. The aim is the elimination of a particular threat or capability. While a preemptive attack is a war-like act, it is not a war in itself. U.S. Military Doctrine defines attacks, raids and strikes, outside of a war, as military operations other than war (MOOTW). Preemptive war is longer in duration than an attack and has as its objective the imposition of the attacker's will on an opponent, normally with limited ends in view. Convincing evidence of an imminent enemy attack drives preemptive attack and preemptive war. In both forms an imminent threat leaves little, if any, time to employ means other than force, to decide, and to act. Ultimately, preemptive operations react to an imminent attack, the character and timing of which are determined by the threat.

Preventative attack is a term undefined outside of this paper. There are no references to it in either theory or doctrine. Nonetheless the concept of preventative attack is relevant and many of the President's statements suggest such a concept. Preventative attack is similar to preemptive attack. However the former rests on a threat judged to be inevitable, as opposed to imminent. Moreover, it differs from preemptive attack in the time available to assess, decide and act. It is premeditated and not an act of last resort. Proving the inevitability of an attack is difficult, much more so than proving the threat of an imminent attack. The same is true of preventative war.

Both preventative attack and preventative war are premeditated acts that aim to eliminate an anticipated threat. The time available before taking action should allow the exhaustion of diplomatic or other means of national power to diffuse the underlying causes of the confrontation prior to out-break of hostilities. Likewise, time provides greater opportunity for building domestic and international consensus and legitimacy. In preventative actions, the attacker possesses the initiative in terms of choosing the time, place and character of his initial

attack. Part of the rationale for preventative military actions rests on cost benefit analysis. “If an attack or war is inevitable, why not fight at the time and place of my choosing, while I have the initiative and before the enemy increases his strength?” This logic is more relevant if the potential assailant possesses weapons of mass destruction (WMD) or is about to obtain them. There is a moral component to this argument as well. If the cause is just, preventative actions may be more economical in terms of collateral damage and loss of life.

FOUNDATIONS OF ANTICIPATORY SELF-DEFENSE

The foundation for rationalizing anticipatory defense rests in the legacy of Just War Theory and International Law stretching back to St. Augustine.¹¹ An early Christian thinker, St. Augustine and those who followed him tried to reconcile the competing moral principles of non-violence and the evil of taking human life with the need to protect innocent human life through the use of force and violence.¹² This tradition produced a construct that has come to be known as *jus ad bellum* or The Just War Framework. The essential elements are:

- Just Cause
- Legitimate Authority
- Public Declaration
- Just Intent
- Proportionality
- Last Resort
- Reasonable Hope of Success¹³

In the sixteenth century Hugo Grotius, in his seminal work The Law of War and Peace (1625) developed a theoretical construct of international law from just war theory. His theories formed the basis of modern international law. The Treaty of Westphalia in 1648 (ending the Thirty Years War and influenced by Grotius' work) and the Congress of Vienna in 1814-15 established a set of international norms that have endured to this day. These norms are the concepts of the modern nation-state and sovereignty.¹⁴

The first diplomatic rationale for preemption based on self-defense came from the United States. In the Webster-Ashburn Treaty of 1842, Daniel Webster, America's Secretary of State at the time, created what has come to be known as the “Caroline Doctrine,” a definition of the circumstances necessary for a nation to justify preemptive hostilities in self-defense.¹⁵ Webster stated that there must be a “necessity that self-defense is instant, overwhelming, and leaving no

choice of means, and no moment of deliberation.”¹⁶ This legacy endures today in Article 51 of the UN Charter. Moreover it accommodates key elements of the “Just War Framework.” Webster’s doctrine implies just intent, last resort, and perhaps proportionality.

Matriculating through history, the concepts of nation state, sovereignty, just war, and the right to self-defense have coalesced in international norms that were codified in Article 51 of the UN Charter. Article 51 states, “Nothing in the present Charter shall impair the right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”¹⁷ The authors of Article 51 clearly intended it for nation-states.¹⁸ Moreover, the concept of ‘armed attack’ did not anticipate terrorist attacks by non-state actors such as those of 9/11. Sean D. Murphy argues:

While there have been spirited debates over the right to engage in “anticipatory self-defense,” most governments and scholars, and the International Court of Justice, appear to agree that self-defense is permitted under Article 51, but only when there has been an “armed attack.” Yet the type of armed attack has been less studied.¹⁹

Determining whether an armed attack is under way is a highly subjective decision. At what point under Article 51 would the United States have been justified in attacking Nagumo’s aircraft carriers as they steamed toward Hawaii in 1941? Could America have attacked them when they were leaving Japanese waters? When they were transiting the Northern Pacific? Perhaps when combat loaded Zeros, Kates, and Vals revved their engines on flight decks some 250 miles from Ohau? Article 51 implies that unless a nation could determine with certainty that an attack had been ordered and was imminent and about to commence, it would have to wait until the attack was in progress to defend itself. The authors of Article 51 set an understandably high standard for the justification of war like acts even when such acts were undertaken in self-defense. Nonetheless, most international law experts believe Article 51 allows anticipatory self-defense.

Given the demonstrated capabilities of international terrorists, not to mention a world proliferating with WMD, it appears that Article 51 of the UN Charter merits reconsideration. The only way to reconcile a preemptive strategy with the UN Charter is to equate imminent attack with the armed attack of Article 51.

Following 9/11 the UN Security Council issued Resolution 1371 (UNSCR 1371).²⁰ It reaffirms that international terrorism is a threat to international peace and states the need to combat terrorism by “all means” in accordance with the UN Charter and the right to self-defense.²¹ It further states that nations should work together to prevent and suppress terrorist

acts within and across their boundaries, while refraining from providing support to terrorism.²² Nonetheless, while UNSCR 1371 calls on member nations to act and legitimizes preventative measures, it falls short of endorsing unilateral or multi-lateral preemptive or preventative military actions. President Bush has already stated that preemption and prevention are methods that America will employ in the Global War on Terror (GWOT). However, short of specific Security Council Resolutions authorizing such actions, preemption pushes the limits of Article 51 and UNSCR 1371.

Terrorist organizations have changed the way the world deals with the concept of sovereignty. This is particularly true of failed states, or those too weak or unwilling to deal with terrorists in their territory. Operation Enduring Freedom is a case in point. The Taliban, despite receiving an ultimatum from President Bush, refused to extradite elements of al-Qaeda linked to 9/11 and operating in Afghanistan. The United States, with support from much of the world and in concert with the Northern Alliance, toppled the Taliban and occupied Afghanistan to restore order and attack al-Qaeda. These actions constituted retaliation against terrorists who attacked America. This was not preemption.

Most agree that Article 51 rules out preventative war. Nevertheless, it appears that the UN may set a precedent in Iraq. President Bush is holding Saddam Hussein responsible for his past transgressions. Moreover, he is holding Saddam responsible for the likelihood that he will produce and employ WMD or provide WMD to terrorists. Driven by the United States, the UN has started down a path that could provide a measure of legitimacy for preventative war. UN Security Council Resolution 1441 (UNSCR 1441) (8 November 2002), states that Iraq, “will face serious consequences as a result of its continued violations of its obligations.”²³ Meanwhile the “United We Stand” Opinion Journal piece of January 30, 2003, and signed by eight European Leaders, add further legitimacy for preventative war.²⁴

If the United States prosecutes preemptive actions it will do so only by pushing the limits of Article 51 of the UN Charter while accepting associated risks. Preventative actions, on the other hand, would be best legitimized when executed with-in the framework of Security Council resolutions or a willing coalition.

ANTICIPATORY SELF-DEFENSE IN STRATEGIC MILITARY THEORY

A survey of classic theoretical works offers little with regard to preemption, preemptive war or preventative war. Sun Tzu’s platitudes addressing the importance of surprise and knowing the enemy offer tenuous relation to preemptive strategies.²⁵ Surprise may play a role in striking an imminent threat or in choosing the time and place of preventative strikes or war. However,

knowing the enemy's intent is a crucial element in determining whether or not to launch preemptive or preventative action. Likewise the theory of the "indirect approach" offered by B.H. Liddell Hart bears some similarity to preemption in that the defender attempts to catch his enemy off guard by striking as the latter executes his attack.²⁶ Clearly, the whole idea of preemption implies an ability to gain some form of advantage on the erstwhile attacker—even if only in a tactical sense.

Clausewitz' "paradoxical trinity" possesses significant relevance to the 'Just War Framework' and preemption.²⁷ In his effort to explain the phenomenon of war he described its dominant tendencies as

...primordial violence, hatred and enmity, which are to be regarded as blind natural force; of the play of chance and probability within which the creative spirit is free to roam; and of its element of subordination, as an instrument of policy, which makes it subject to reason alone.²⁸

The great Prussian ties each part of this trinity to "the people...the commander and army", and "the government" respectively.²⁹

Clausewitz' trinitarian paradigm correlates with the "Just War" construct and provides insights into some of its key elements. In just war theory the political aims of the government are manifest in the concept of legitimate authority. These political aims are further related to the public declaration that the legitimate authority should issue. Clausewitz describes war as an instrument of policy subject to the realm of reason.³⁰ Reason it can be argued—in an ideal sense—should employ war only with just intent, proportionality and as a last resort. Moreover, the rational leader should not launch a war without a reasonable hope of success.

Likewise, in Clausewitz' description of the passions inherent in the populace, he accounts for the importance of obtaining domestic and international legitimacy.³¹ Certainly, in a democracy such as the United States, and even more so in a coalition or body like the UN, the support of the populace offers not only legitimacy but moral support for a just cause. Conversely, preemptive and preventative military actions may inflame the passion of those sympathetic to America's foes.

When Clausewitz speaks of the "commander and army" where the "the play of chance and probability within which the creative spirit is free to roam" he accommodates just war theory's proportionality, last resort and reasonable hope of success.³² Political leaders depend on the military to create viable options for the application of force. The military determines the lead-time required for a preemptive strike and by default determines whether there is time

available to apply means other than force. It determines the chance or risk involved and provides the leader with probability of success. Likewise, the military will determine the chance of minimizing collateral damage. The political leaders must then consider the risks of the unintended consequences of military action. Of course the Clausewitzian concept of friction is at play in all of these calculations.

A superbly prepared military, capable of operational success, is rarely a cure for faulty strategy resulting from a mismatch between capability, strategy and aim.

...the most far-reaching act of judgement that the statesman and the commander have to make is to establish by that test the kind of war on which they are embarking; neither mistaking it for, not trying to turn it into, something that is alien to its nature.³³

Clausewitz' admonition must be the point of origin for strategists as they plan for war. It demands rigorous and realistic analysis of the object in view and the capabilities at hand. No less important is the cost benefit analysis of the object desired and the resources the state is willing to expend in pursuit of its aims. This is true of preemption and prevention. When viable ways cannot be created with the available means, military leaders must communicate that reality to the political leadership. Frequently political leaders have reason to persevere despite a mismatch between ends, ways and means. Given the myriad of factors beyond their control, strategists often plan and execute operations as circumstances demand as opposed to how they want to. Furthermore, military leaders should rigorously explore alternative strategies or branches and present them to senior leaders. Adjustments to strategies and perhaps the ends should be made based upon the circumstances of unexpected operational opportunities and setbacks. However, when changes occur to aims, a reassessment of strategy from ends to means is in order. The harmonization of strategy and aims is no less critical in the execution of preemptive and preventative actions. Planners must weigh carefully the possible second and third order effects of preemptive actions. Immediate success in preemptive actions may have long term unexpected or undesirable results. The risk of unintended consequences, escalation and successful conflict termination come to mind. A clear criteria for action, developed prior to acting, possess great value given the limited time available in reacting to an imminent threat.

Early cold war theorists provide the most direct analyses of preemptive strategies. They directed their efforts at making sense of nuclear warfare and explored preemptive concepts with greater rigor than their predecessors. Nonetheless caution is required when searching for contemporary utility in their writings given the differences between nuclear war—risking an end

to civilization—and the war on terrorism. One theorist who provides insights for current students of preemption is Bernard Brodie. In his landmark work Strategy in the Missile Age Brodie produced an approach to nuclear strategy that the United States employed through the end of the cold war.³⁴ Brodie traced the evolution of strategic thought from Clausewitz to the 1950s, emphasizing the obsolescence of traditional concepts in the missile age.

Brodie believed that nuclear weapons, with their inherent destructiveness, were exclusively offensive instruments with no defensive capability. Thus the primacy of the defense as the stronger form of war was invalid in the nuclear era.³⁵ Paradoxically, the traditional strength of the offense, seizing the initiative by striking first at the time and place of the attacker's choosing, no longer held merit when the outcome might be mutual destruction.³⁶ Moreover, with the risk of enormous losses in nuclear war, Brodie believed that a victory in strategic nuclear war might provide little advantage over defeat.³⁷

Advocating a strategy based on deterrence, Brodie argued against strategies based on anticipatory defense. Attempting to highlight the dilemma in anticipatory strategies he mused:

...the philosophy of "I won't strike first unless you do," though the phrase should no doubt be edited to read, "unless you attempt to." Anyway there is the insistence that come what may, "I will strike first!"—though the "I" agrees to wait long enough so that my qualms on moral grounds are automatically resolved.³⁸

Brodie felt that American values argued against preemptive strategies. He believed such strategies placed undue burden for decision making on the shoulders of the President.³⁹ Moreover, he believed it was beyond America's capability to divine the inevitability of nuclear war.⁴⁰

Despite his focus on nuclear warfare against a symmetrical threat, and his inability to predict a future populated by international terrorists and rogue states, Brodie's analysis of preemptive strategies provides pertinent insights on America's current policy. For preemption to be valid, Brodie emphasized the requirement for precise intelligence to identify imminent threats with great certainty. That same quality of intelligence was required to target and preempt threats. He envisioned the President as the ultimate decision-maker in determining whether threats were truly imminent and whether attacking preemptively was warranted. Finally, to justify preemption the President would require strong evidence to persuade the American populace of just cause when striking first.⁴¹ Just war theory and Clausewitz' trinity echo in Brodie's writings.

Michael Walzer adds useful insights on anticipatory self-defense in Just and Unjust Wars. Walzer not only accepts preemption as a legitimate form of self-defense, but he also criticizes views holding an overly legalistic interpretation of imminent threat. Thus he offers alternative approaches more sympathetic to the President's new policy. To Walzer, the legalists see Webster's interpretation of preemption as "a reflex action, a throwing up of one's arms at the very last minute."⁴² Walzer believes this view is too restrictive when the safety of the nation's citizens and allies is at risk. He adds, "The line between legitimate and illegitimate first strikes is not going to be drawn at the point of imminent attack but at the point of sufficient threat."⁴³ Walzer defines sufficient threat as "a manifest intent to injure, a degree of active preparation that makes that intent a positive danger, and a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk."⁴⁴ His approach accommodates both preemptive and preventative actions and simplifies the criteria for a just war to two fundamental principles: it must be a defensively motivated last resort and "its anticipated costs to soldiers and civilians alike must not be disproportionate to (greater than) the value of its ends."⁴⁵ Walzer's thoughts on just war theory and anticipatory self-defense correlate with President Bush's strategy.

HISTORICAL EXAMPLES OF ANTICIPATORY SELF-DEFENSE

PREVENTATIVE WAR: IMPERIAL JAPAN 1941

On December 7, 1941 the Imperial Japanese Navy struck Pearl Harbor with a surprise attack of devastating proportions. This unannounced initiation of war was the opening blow in a war of conquest. It was followed by near simultaneous attacks stretching from the Hawaiian Islands to the Indian Ocean. Japan launched a preventative war intended to create a strategic situation so intimidating to the United States that a negotiated settlement to Japan's advantage would result. Japanese strategists believed that these surprise attacks were the only way Japan could prevail in a war that the United States would inevitably thrust on them.

Between 1895 and 1941, radical nationalism dominated Japan. Meanwhile Japanese leaders felt exploited in their dealings with Western Powers and that these efforts put Japan in an inferior position.⁴⁶ Nevertheless, it was Japan's designs on China that led to war with America. The League of Nations censured Japan after her invasion of Manchuria in 1931 and Japan protested by withdrawing from the League.⁴⁷ Near Peking, a minor engagement between Japanese and Chinese forces on July 7, 1937 escalated to another war.⁴⁸ By 1939, after initial Japanese successes, the fighting in China devolved into a war of attrition.⁴⁹

To win the war, Japan endeavored to isolate China and obtain additional resources in Indo-China. The fall of France and the Low Countries in 1940 provided an opportunity.⁵⁰ Despite American warnings, in September 1940 the Japanese landed in French Indo-China.⁵¹ These moves triggered American restrictions on oil and scrap metal trade with Japan.⁵² Further Japanese advances in the region during 1941 brought tighter U.S. trade restrictions.⁵³ To continue the war in China Japan needed resources, particularly oil. Without oil from America and without a change in policy Japan could only obtain oil in the Dutch East Indies. The Japanese estimated their oil reserves at only six months without oil from the U.S. or other sources. Japanese attempts to reverse America's embargo through negotiation were unsuccessful. In the meantime American strength in the Pacific grew while American industry geared up for war.

Japan's leaders decided to seize the resource areas they required. On September 4, 1941 they chose a path leading to preventative war with the United States. They decided on war because they believed the seizure of resource areas would trigger American intervention.⁵⁴

Our Empire will (1) for the purpose of self-defense and self preservation complete preparations for war, (2) concurrently take all possible diplomatic measures vis-à-vis the USA and Great Britain and thereby endeavor to attain our objectives. (3) In the event that there is no prospect of our demands being met by the first ten days of October ... we will immediately decide to commence hostilities against the United States, Britain and the Netherlands.⁵⁵

Eventually, the deadline for decision was extended to November 30, 1941.⁵⁶ However, on the 26th the United States made it clear that Japan would have to withdraw from China and Indo-China.⁵⁷ Japan's leaders determined that giving up their goals in China was unacceptable and the equivalent of capitulation. On November 30, 1941, with the Emperor's authorization Japan's leaders decided on war.⁵⁸ The attack on Pearl Harbor was by definition the opening battle in what the Japanese leadership believed was a preventative war. After Pearl Harbor, with most of the American battle fleet neutralized and the British Pacific fleet heavily attrited and chased from the theater, the Japanese Army and Navy accomplished nearly all of their assigned objectives.⁵⁹

PREEMPTIVE WAR: ISRAEL 1967

After the War of Independence in 1948 and the 1956 "100 Hour War" Israel lacked operational depth and was surrounded by hostile nations of the United Arab Republic (UAR). Israeli policy was simple and logical given her geopolitical situation. First, avoid war. To deter

war Israel would maintain a credible military capability and demonstrate a willingness to use it. In the event of war Israel must win without outside help and against all neighboring enemies simultaneously. Finally, Israel would fight without losing a major battle, since the consequences of a single significant defeat would be disastrous.⁶⁰

Israel announced *casi belli* for which they would consider offensive, anticipatory, or defensive wars against potential opponents. These causes were a massive build up of threatening forces near Israel's borders; the closing of the Strait of Tiran; a high level of guerilla attacks that could not be contained by passive defense or punitive raids; preparation for a strategic air attack on Israeli population centers, infrastructure, or facilities; the entry of Jordan into an alliance with Egypt and Syria; the take over of Lebanon or Jordan by hostile powers; and a growing imbalance in the combat potential between probable aggressors and Israel.⁶¹

From the fall of 1966 through the summer of 1967 a series of escalating events and miscalculations led the United Arab Republic and Israel toward another war. These escalations boiled over in the spring of 1967. On April 7, 1967 Syrian artillery fired on Israel. Israeli aircraft retaliated by bombing the artillery positions and then shot down six Syrian aircraft that intercepted them. On May 14, 1967 Egypt's President Nasser publicly claimed that Israel was mobilizing for war and on the 16th he asked the United Nations Emergency Force (UNEF) in the Sinai to withdraw from border areas.⁶² Israel and Egypt started partial mobilizations. By the 23rd, most of the UNEF had withdrawn and as they did Egyptian forces closed the Strait of Tiran.⁶³ By May 27th, most Arab nations pledged support for any nation attacked by Israel.⁶⁴ Meanwhile Jordan's King Hussein signed a pact with Nasser that placed Jordanian forces under an Egyptian General and opened Jordan to Egyptian and Iraqi forces.⁶⁵ On June 4th, Iraq joined the UAR and Jordanian Alliance.⁶⁶ Nasser declared, "We are eager for battle in order to force the enemy to awake from his dreams and meet Arab reality face to face," adding further evidence that an attack was imminent.⁶⁷ Seven Egyptian divisions moved into the Sinai, Egyptian air activity increased dramatically while the shelling of Israeli settlements from the Golan and Gaza intensified. Meanwhile war rhetoric in the Arab media reached fever pitch.⁶⁸

Five of the Israel's six *casus belli* had been triggered and facing what they believed was an imminent attack, the Israeli leadership decided to strike first. Only preemptive war made sense to those responsible for preventing disaster from overtaking their tiny nation. On June 5, 1967 at 7:55 am the Israeli Air Force (IAF) spearheaded the attack and by noon they had destroyed the Egyptian Air Force.⁶⁹ Spurred by messages from the Egyptians, Jordan committed its Air Force and started long-range artillery attacks on Israel.⁷⁰ In the Golan the Syrians waited until the 6th when they launched an abortive ground attack.⁷¹

Employing speed and shock the Israeli Defense Force (IDF) attacked into the Sinai and Gaza Strip. By June 8th they secured a line along the Suez Canal.⁷² Meanwhile, the IDF pushed the Jordanians out of the West Bank.⁷³ Ignoring UN efforts to establish cease-fire on the 8th, the Israelis attacked to rid the Golan Heights of the Syrian threat. By the 10th they achieved their objectives and the fighting wound down.⁷⁴

PREVENTATIVE ATTACK: THE OSIRAK REACTOR, 1981

An example more analogous to the President's new strategy is Israel's attack on Iraq's Osirak nuclear reactor in 1981. At 5:35 pm on June 7, 1981, eight IAF F-16s, flown by elite pilots, streaked across the Baghdad sky to attack the heart of Iraq's nuclear weapons effort. In the span of a minute, they destroyed the Iraqi reactor and indefinitely set back Saddam Hussein's nuclear weapons program. Making the 635 mile flight from Israeli to Baghdad, the attackers violated Jordanian and Saudi Arabian airspace at great risk of detection. The attackers achieved surprise and met only ineffective anti-aircraft fire.⁷⁵

The Israeli attack was a clear example of a preventative strike. Between August 1979 and June 1981 Israeli intelligence had been tracking Iraq's attempts to obtain nuclear weaponry. With the assistance of France, Iraq began building a reactor in the late 1970's with the intention of producing enough enriched uranium to create atomic weapons. By the fall of 1980 Israeli intelligence projected that the reactor would go on-line within a year. They could not wait because a strike after the reactor was on-line would produce a radioactive disaster. As a result, the Israelis planned the attack for November 4, 1980. The Israelis postponed the attack three times. However, in the spring of 1981, Israeli intelligence predicted the reactor would go on-line between July and September of the year and as a result the attack was launched on June 7, 1981.⁷⁶

The Israeli rationale was simple. Israel's enemies had sworn her destruction and attempted just that in 1948, 1967 and 1973. Saddam's attempt to build an "Arab Bomb" combined with his intense anti-Israeli rhetoric was hostile intent enough for Israel's leaders. Rather than allow the Iraqis to produce a weapon of mass destruction, capable of hitting Israel's urban areas, they would strike before Iraq could build a bomb.⁷⁷ Despite Arab vows to destroy Israel the activation of the reactor was not an imminent threat. However, in the eyes of Israeli leaders the threat was inevitable and allowing the reactor to go on-line was not worth the risk. With an operational reactor, Saddam Hussein would inevitably produce a nuclear weapon and the Israelis believed it would be employed to threaten or strike them. Furthermore, an Iraqi

nuclear weapon would provide a deterrent to Israel's nuclear capability. The similarities with current events surrounding Iraq are obvious.

HISTORY AND THE JUST WAR CONSTRUCT

Applying the "just war framework" to these historical examples provides numerous insights. Moreover, those insights contribute to the construction of American decision criteria for anticipatory self-defense.

JUST CAUSE/JUST INTENT

Japan's justification for war was couched in preventative war rhetoric. A warped sense of just cause was an excuse for war. Nonetheless Japan's aim was to subjugate, exploit and enslave the areas it conquered. Clearly the Japanese cause and intent were unjust. Most of the world saw Japan's aggression for what it was and her example demonstrates the risks inherent in justifying a policy of anticipatory defense. Assuming America's motivations are just in regard to anticipatory defense and that eventually most of the world will accept the policy, how long will it take for a rogue state to invoke a similar policy as an excuse for aggression? In both of the Israeli examples the cause was national survival and the intent was the defeat or destruction of the immediate instruments of the threat.

LEGITIMATE AUTHORITY / PUBLIC DECLARATION

Each nation acted under the legitimate authority of its national leadership. In two of the examples Israel issued public declarations in the form of *casi belli*. In 1967 and 1981 threats triggered one or more of these *casi belli*. The Imperial Japanese made no public declaration of conditions that would trigger a war. Meanwhile they carried on normal diplomatic relations with their opponents up to the moment of attack, concealing their intentions while attempting to negotiate a settlement with the United States.

PROPORTIONALITY

Japanese strategists ignored the concept of proportionality. The conquest of China, Southeast Asia, Australia and the Western Pacific was an extreme course of action to ensure Japan's survival. The Israelis demonstrated proportionality and restraint in both of their actions. In the '67 War the IDF limited their objectives and refrained from seizing additional territory or continuing the war to inflict greater losses on their opponents. Likewise, they limited the Osirak Raid to the reactor alone when additional air strikes to suppress Iraqi air defenses could have been executed.

LAST RESORT

In terms of “last resort,” Tojo had alternatives to wars of aggression and there was no evidence of an imminent American attack or even inevitable entry into the war if Japan refrained from attacking American forces. The Japanese could have withdrawn from China and Indo-China. They deemed this unacceptable. They could have limited their attacks to the specific resource areas they required. They determined this was too risky and expected such attacks would trigger American intervention. This is not to say that a future declaration of war and intervention by the Americans was impossible. Despite a strong isolationist sentiment in the United States, American efforts at mobilization and her economic restrictions on precious war material were threats to Japan’s security.

In 1967, the Israelis faced what they perceived was an imminent invasion; preemptive war was a last resort. However, Osirak raises interesting questions with regard to the imminent versus inevitable nature of the threat. Israeli diplomacy garnered little international support in efforts to forestall nuclear proliferation in Iraq. Had the reactor gone on-line in 1981 an Iraqi bomb was still years away. The threat was not imminent. However, if Israel waited to strike after the reactor went on-line, the potential for disproportionate casualties was unacceptable. Interestingly, Khidhir Hamza, one of the scientists working on Iraq’s nuclear program stated that Saddam intended to use nuclear weapons against Israel.⁷⁸ The Israelis believed the risk of allowing the Iraqis to build a bomb was too great. Thus the Osirak Raid was preventative. One can only speculate what the Middle East would look like today if Saddam had a nuclear weapon in 1980s. Israel’s dilemma in 1982 is analogous to the Iraqi problem President Bush is dealing with today while North Korea demonstrates the risk involved in allowing rogue states to obtain WMD.

REASONABLE HOPE OF SUCCESS

Calculating the potential for success, the Japanese accepted enormous risks as evidenced in the sleeping giant remarks of Admiral Yamamoto. Military advisors predicting a successful conclusion to the war within three months of the Pearl Harbor attack left Emperor Hirohito exasperated.⁷⁹ The Japanese strategic estimate was flawed and based more on wishful thinking and pride than hard calculations. The Israelis believed they would succeed, skillfully calculated the risks involved in their operations and applied measures to mitigate those risks.

ANTICIPATORY SELF-DEFENSE IN AMERICAN STRATEGIC CULTURE

Americans see the Japanese attack on Pearl Harbor a dastardly sneak attack. Thus, when people speak of preemption many Americans conjure up images of an unjust, unannounced, surprise attack. However, the United States has a tradition albeit a small one of preemptive attacks. American presidents and senior military leaders have seriously considered, planned for and even executed preemptive/preventative operations when they believed such operations were necessary. Interestingly, as stated earlier, Daniel Webster provided one of the earliest documented rationales for preemptive attack.

On the morning of December 7, 1941, the *USS Ward* applied defensive rules of engagement to execute a preemptive attack on a Japanese midget submarine outside of Pearl Harbor.⁸⁰ Likewise, prior to December 11, 1941, US warships in the Atlantic engaged German submarines.⁸¹ In the late 1930s the Marine Corps planned to seize Caribbean and Atlantic Islands and littorals to preempt the Nazis in areas they might obtain through diplomatic means.⁸²

During the Cold War, American leaders flirted with preemptive strategies. While the United States rejected preventative war in NSC-68 of April 1950, senior military leaders continued to advocate anticipatory defense.⁸³ Many believed that the measures required for America to prevail in a long Cold War would exhaust the United States, while increasingly militarizing the society. Moreover, they argued that if war was inevitable, it made sense to strike before growing Soviet strength made the risks prohibitive.

In September 1953 President Eisenhower considered preventative war with the Soviet Union in correspondence to Secretary of State John Foster Dulles.⁸⁴ He reversed such thinking and from 1954 until the end of the decade U.S. nuclear doctrine explicitly ruled out preventative war, “although it continued to emphasize the desirability of a preemptive strike if a Soviet attack was deemed imminent and unavoidable.”⁸⁵ In 1962, President Kennedy, his cabinet and the Joint Chiefs of Staff seriously contemplated a preventative war in the early stages of the Cuban Missile Crisis.⁸⁶ From the 1960s to the end of the Cold War, NATO strategy rested on the first use of nuclear weapons if a Soviet invasion of Western Europe could not be defeated by conventional forces.

Throughout the Cold War the goal of some of America’s small-scale interventions included the installation of governments sympathetic to the United States. These interventions can be viewed as preventative actions to remove left-leaning governments before the Soviets could exploit them.⁸⁷ Often these interventions were covert as was the case in Iran in 1953, Guatemala in 1954, and Chile in 1973.⁸⁸ Occasionally they were overt, as was the case in the 1961 Bay of Pigs Invasion.⁸⁹ Arguably, NATO’s brief war with Serbia in 1999 was a

preventative war on behalf of the Kosovar Muslims.⁹⁰ Notwithstanding the preventative nature of these endeavors none of them rise to the scope of action that President Bush is now contemplating.

Pundits musing that preemption is a radical break with American tradition ignore significant portions of the nation's history. Senior American senior leaders did not hesitate to give anticipatory defense strategies serious consideration when they were the only practical expedients in difficult national security situations. This was particularly true in the Cold War when America's survival was at stake.

It is difficult to equate the arsenal of today's terrorists and rogue states with the destructive capacity of the former Soviet Union. Nonetheless the Soviets, however threatening, never struck the United States. Al-Qaeda attacked America with great cost to the nation. Given the demonstrated ability of terrorists to strike America and the potential wedding of weapons of mass destruction with future terrorist attacks, the President's anticipatory strategy is valid. The question becomes one of when to act preemptively or preventatively. However, this strategy is juxtaposed with the American cultural bias against starting wars. Because of these dilemmas, consideration of just war criteria and legitimacy could prove useful to the effective application of the President's strategy. With this in mind, it makes sense to find a paradigm that justifies and provides decision criteria for an American strategy of anticipatory self-defense.

PROPOSED DECISION CRITERIA FOR ANTICIPATORY SELF-DEFENSE

Whenever possible DOD should develop scenarios and capabilities to counter potential threats. Moreover, it should request presidential criteria for likely scenarios and thresholds for preemptive and preventative actions. In the absence of such criteria DOD should war-game and recommend its own. With some modification the "just war" framework is a solid start point.⁹¹ A principled, moral approach to the problem based on a long standing ethical foundation that reflects most Americans' sense of fair play not only has value in deciding whether to attack preemptively but would serve the nation well in justifying such actions.

While it seems evident that scenarios requiring preemptive actions are a crisis some cases, like contemplating preventative war in Iraq, will not require time constrained crisis response. In regard to crisis action planning, DOD's current joint doctrine remains sound and applicable.⁹² However, criteria for the employment of preemption would be useful in both crisis response and deliberate planning.

Imminent/Inevitable Threat: Determined by the President on a case by case basis with regard to imminent threats. When he deems the threat inevitable, he should consult Congress or request its endorsement. There must be a high probability that a threat attack will inflict significant damage to the United States or its citizens if action is not taken to defeat or destroy that threat.

In cases involving WMD:

- Adversary possesses or is on the verge of possessing WMD
- Adversary intends to use WMD or make them available to others who will
- Risk of waiting for absolute certainty is unacceptably high

Legitimate Authority: The President backed by domestic and multi-lateral support when possible. When he deems the threat inevitable he should, as a minimum, consult Congress or request its for endorsement. In preventative actions he should make every reasonable effort to garner domestic and international legitimacy prior to acting.

Public Declaration: Whenever possible the United States should signal its intention to preempt prior to acting. To some degree America's stated policy in regard to anticipatory defense already signals this intent. If the United States chooses not to signal prior to a specific action, it must assume responsibility and provide evidence of the threat as soon as possible following an attack. In the case of preventative actions it should provide signals and a demarche.

Just Intent: The US objective must aim at eliminating imminent or inevitable threats to the United States and its citizens and not make an attempt at aggrandizement or material gain.

Proportionality: Sufficient force should be employed to accomplish the mission. However, damage and casualties inflicted should be limited to only those required to destroy or defeat the threat. Standing Rules of Engagement should be developed and modified as required based on the situation surrounding each operation. Whenever possible, non-lethal weapons should be employed. As a general rule, anticipatory defensive actions should be confined to operations with non-nuclear forces.

Last Resort: Preemptive action is the only course of action possessing a reasonable chance of eliminating the threat prior to it inflicting unacceptable harm to Americans or the United States. In the case of preventative actions the application of every element of national and international power possible should be attempted prior to attack or war.

Reasonable Hope of Success: The actions undertaken by the United States must have a high probability of accomplishing the mission of destroying the targeted threat with minimal collateral damage.

This construct is not absolute or all-inclusive. As F.G. Hoffman states, "Prescriptive approaches rarely meet the tests of history, particularly in dynamic time periods."⁹³ However, these criteria or a set like them could be a tool to guide the thoughts of the nation's senior

decision-makers. Ultimately each preemptive action will require an estimate of the situation, however brief, and a decision based on the information available at the point of decision.

The United States could publicize criteria or *casi belli* for anticipatory self-defense. The announcement that a rational and morally based paradigm was in place to guide US actions would reinforce domestic and international legitimacy. Furthermore, explaining a preemptive action after the fact by employing the criteria possesses value. However, a strong opposing argument can be made against publishing criteria, as they would provide the basis for criticism in the event that one or more of the criteria were not entirely met. In any case such criteria should never back the President into a corner.

DOD should recommend that the President exhaust all viable efforts to win support of the international community through a coalition, the UN or both before he commits to preemptive or preventative actions. At the same time the President should seek a manifestation of support from the Congress and domestic populace. While a declaration of war is the most demonstrable vehicle for such support, a clear congressional resolution would add legitimacy. It is instructive to note that Congress has declared war only five times in some 200-270 armed conflicts involving U.S. Armed Forces.⁹⁴ Arguably, the Joint Resolution of September 14, 2001 empowered the President to order preemptive actions. Nevertheless, given the gravity of a decision to act preemptively against or in another nation state, Congressional endorsement is the best demonstration of domestic legitimacy.

STRATEGY: THE ENDS-WAYS-MEANS OF ANTICIPATORY DEFENSE

ENDS

With or without preemption in America's National Military Strategy, DOD will assure allies and friends, dissuade adversaries, deter aggression and coercion, and decisively defeat adversaries if deterrence fails.⁹⁵ However, given the specific reference to preemption in the latest NSS, DOD must prepare to defeat terrorist threats with global reach and rogue states before they attack America.⁹⁶ This is one line of operations in the war on terror. The ends achieved by preemptive measures will not in themselves bring about victory. They contribute to the overall ends. Such attacks will aim to destroy terrorists by attacking their fighting elements in their sanctuaries, as well as attacks on their leadership, command, control and communications.⁹⁷ Moreover, given the President's statements, the United States military must be prepared to execute preemptive or preventative wars when threats warrant them.

WAYS

Ways or courses of action to counter threats where anticipatory self-defense applies will likely fall under one of three categories: signaled, unannounced, and clandestine preemption/prevention.

Signaled Preemption/Prevention

At first blush, signaling would appear to contradict the “imminent threat” context normally associated with self-defense and justifiable preemption. However, signaled preemption could include a public warning or demarche to potential threats. Signals include presidential statements, Congressional hearings and resolutions as well as a clearly stated intent to strike declared at the United Nations. Media diplomacy could send similar signals. The President and most of his Cabinet have already done this. Signaling, to some degree, mitigates objections that might be raised to a surprise attack or lack of “public announcement” in just war theory.⁹⁸ Here America would avoid much of the stigma attached to an unannounced initiation of hostilities in the tradition of surprise attacks perpetrated by aggressor nations throughout history.

In some cases the United States may have to solicit the support of friendly, neutral or unsympathetic nations to grant permission to act in their territory for preemptive or preventative attacks. Other situations might call for action within a coalition. All of these cases would fall under the signaled category. Some nations might agree to American preemption in specified contingencies. Preemptive attack, preemptive war, preventative attack and preventative war are conceivable in the context of the signaled category. In fact, given the American ethos in regard to striking first, it is difficult to envision preventative war in any other context. The President’s current challenge in garnering legitimacy for a preventative war against Iraq is a case in point.

Unannounced Preemption/Prevention

Unannounced action is a less desirable course of action but nonetheless one for which scenarios can be envisioned. The President could order a preemptive attack, without warning, when it is imperative to eliminate an imminent attack originating from a critical mobile target in a time-constrained environment. In the extreme, this situation could manifest itself in a nation loading and preparing to launch WMD armed missiles at targets in America or her allies. At the other end of the spectrum is a terrorist cell transiting or staging in another country in preparation for an imminent attack. It is entirely plausible that there will be cases where there is little time to consult with or obtain some form of international or domestic support before preempting.

Unannounced preemption does not obviate the need for post strike justification. Once an attack is complete, America must be prepared to provide convincing evidence of the necessity for action. Preemptive and preventative attacks are conceivable in the context of unannounced actions. However, given the American ethos in regard to anticipatory self-defense, it is difficult to envision preemptive or preventative war in this context.

Clandestine Preemption/Prevention

The discrete elimination of impending attacks on America or US citizens is the final type and labeled clandestine preemption/prevention. Clandestine preemption or prevention by their very nature are exclusively the domain of attacks against discrete targets. Preemptive war and preventative war will not be considered clandestine options.

It is not difficult to envision situations where the President may have to act in the absence of international or domestic signals and without an immediate acknowledgement of the strike. Some of these cases may arise when the host nation of the target is expected to be uncooperative. Moreover, the President may determine that the nature of the situation requires an attack that remains secret for an extended period of time. Secrecy may be required for a myriad of reasons. The military may desire to protect intelligence sources or may have an operational security (OPSEC) requirement based on a sequel to the attack. Consider a legitimate nation, whose leaders want to eliminate terrorists in their country. However, they do not want to demonstrate overt cooperation with the United States. In this case they may invite clandestine attacks without acknowledging complicity. In this case the military working independently or with a civil agency, like the Central Intelligence Agency (CIA), may act to eliminate imminent or inevitable threats. Special Operations Forces (SOF) are most likely to be employed in this manner. However, conventional Precision Guided Munitions (PGM) launched from aircraft, ships or submarines might be appropriate as well.

On 4 November 2002, the CIA destroyed an SUV transporting six al-Qaeda members. They attacked it with a Hellfire missile launched from a Predator Remote Piloted Vehicle (RPV). Operating inside Yemen with the Yemeni Government's permission, the CIA killed all six personnel including Qaed Sinan Harithi, the man who planned the *USS Cole* bombing. The Yemenis, the President, the Secretary of Defense and CIA would neither confirm nor deny complicity in the strike. However, individuals speaking anonymously leaked details. Few nations objected to the strike. This action is a prototype for clandestine preemption and prevention where post-strike denial is necessary.⁹⁹

Deterrent Value of Preemptive/Preventative Strategies

Preemption is unlikely to dissuade terrorists committed to martyrdom. However, the anticipatory defense doctrine may dissuade some nations from supporting or harboring terrorists. Such a doctrine induces uncertainty in the decision-making cycles of threat actors and their supporters. Nations contemplating support for terrorists must weigh the risk of preemptive or preventative attacks. American success in Afghanistan and Yemen sends a powerful signal to rogue states. Meanwhile, demonstrations of America's preemptive potential in forward basing, flexible deterrent options and show of force missions reinforce deterrence.

Juxtaposed against the deterrent value of the policy is the risk that it will galvanize some nations to defy the United States and strive to balance her power regionally. International legitimacy and convincing evidence of the need to preempt will contribute to the mitigation of this risk. Another risk in the President's policy is increased motivation for rogue states to acquire WMD before the United States can effectively execute preventative actions. North Korea manifests this dynamic.

MEANS

America's military means are impressive. Given the characteristics of the terrorist threat, nuclear and large conventional forces are less likely to be employed than Special Operations Forces. However, conventional and SOF capabilities are suitable means in all three of these categories, particularly when rogue states are involved. America's nuclear capability remains sound and relevant. However, while nuclear weapons possess utility as part of the traditional deterrent, they possess little value in preemptive/preventative strikes against terrorists or rogue states. Against the latter threat SOF or conventional strikes are the first choice to eliminate small WMD capabilities. Meanwhile, National Missile Defense (NMD) offers hope that small-scale WMD armed missile attacks can be defeated. In any case it is difficult to envision a government so irrational as to risk American nuclear retaliation. Likewise it is difficult to envision the United States initiating a nuclear attack with all of the associated second and third order effects to destroy small nuclear stockpiles. The risks involved are too great. Nonetheless, targeting updates will be essential as threats evolve--particularly the threat of nuclear-armed rogue nations.

America's conventional forces—to include the Army's legacy force—remain relevant, particularly for inter-state conflict in the form of preemptive or preventative war. However, the Army's rotary wing aviation, light infantry and Advanced Tactical Missile System (ATCMS) could be very effective in preemptive strikes. Moreover, the Army may play an enabling role securing

forward operating bases for Air Force, SOF and CIA operatives as they stage for strikes. The Interim Brigades (IBCT) will add to the Army's deployability and flexibility. The US Air Force, with its global reach, its growing array of precision guided munitions (PGM) and stealth platforms, is a key component of conventional preemptive means. No less impressive are the flexibility, endurance, range and over the horizon capabilities of the US Navy and Marine Corps. Sea-launched PGMs, carrier based strike forces, Marine Expeditionary Unit (Special Operations Capable) (MEU(SOC)) and the 4th Marine Expeditionary Brigade (Antiterrorism) provide potent force to the preemptive arsenal. Likewise, the Navy's Sea Strike concept featuring persistent intelligence, surveillance and reconnaissance, time sensitive strike and Tactical Tomahawk will contribute enormously to preemptive strategies. Without changing the course of transformation DOD should continue to pursue the Multi-dimensional Extended Range Precision Strike, Global Strike Task Force and the Army Deep Strike Brigade concepts. These concepts could significantly enhance preemptive and preventative capabilities.

SOF are the most likely means for strikes against terrorists. Their low signature and flexibility make them particularly well suited to these operations. Experience in Afghanistan demonstrated both the effectiveness and the over-extension of America's Special Forces.¹⁰⁰ Consideration should be given to an expansion of these forces, despite the challenges inherent in balancing end-strength, maintaining quality, and optimizing reserve component roles.¹⁰¹ American leaders expect the war on terrorism to be long, and transformation efforts may provide opportunity for such an effort.

RECOMMENDATIONS

Besides the recommendations already discussed, the analysis leads to five additional areas that merit attention in the context of anticipatory self-defense. They are rules of engagement (ROE), interagency operations, information operations, non-lethal attack and command, control, communications, computers, intelligence, surveillance and reconnaissance (C4ISR). Unfortunately the limited scope of this paper prevents detailed examination of these topics.

The requirement to create rules of engagement (ROE) for forces committed to preemptive and preventative attacks—particularly in clandestine operations—is critical.¹⁰² While a general ROE for such actions must be developed, a discrete ROE for each strike will have to be refined on a case by case basis.¹⁰³

The importance of C4ISR in the GWOT and preemption in particular is obvious. Focused, actionable intelligence is the lynch pin of any preemptive or preventative endeavor, particularly

in terms of targeting, planning, and justification. In the business of preemption, minutes could decide success or failure. Streamlining the dissemination of intelligence while maintaining appropriate security must become a priority.¹⁰⁴

Throughout the planning, preparation, execution, and post operation phases of a preemption, DOD must be ready to deal with the numerous agencies at America's or her allies' disposal. The Joint Interagency concept should be fostered and expanded as necessary to facilitate preemptive endeavors.¹⁰⁵

Justification will be required for preemptive and preventative actions. A powerful information campaign can provide this justification. Well-informed American and world publics are critical to legitimacy. DOD must develop a responsive capability to accurately record and document preemptive and preventative actions undertaken on behalf of the nation.¹⁰⁶

Nonlethal weapons could be useful in preemptive and preventative attacks.¹⁰⁷ Employing these weapons could pay great dividends in justifying attacks, reinforcing legitimacy, demonstrating proportionality and facilitating the capture of terrorists.¹⁰⁸ DOD should continue research in non-lethal weaponry and its application in anticipatory defense.

CONCLUSIONS

The world is a dangerous place to live, not because of the people who are evil, but because of the people who don't do anything about it.¹⁰⁹

—Albert Einstein

The President may order anticipatory defense, in the form of preemptive or preventive military action, to protect the United States from terrorism and rogue states. This strategy is one line of operations in a more holistic strategy in the war on terror. Thus the ends achieved by preemptive measures will not in themselves bring about victory. They can only contribute to the overall ends.

Despite publicity surrounding the announcement of the strategy, anticipatory defense will occur infrequently, and only when risks are too significant to do otherwise. Nonetheless preemptive or preventive actions, even when immediately successful, will incur other risks. While this doctrine does little to alter the fundamental ends of the nation's military strategy, it does add a page to the armed forces playbook. This course of action or "way" will manifest itself as signaled, unannounced, or clandestine military action. DOD has the means to execute these ways. The "just war" framework is a start point for the creation of decision criteria. DOD

should develop such criteria and refine plans and tactics that optimize employment of its very capable means. The recommendations of this paper are one small step in that direction.

Empty blocks on Manhattan's Lower West Side testify that the world is a dangerous place. Al-Qaeda's 9/11 attacks did not destroy the United States but they had a tumultuous impact on America's psyche and economy. How many more attacks can America absorb before the consequences are more disastrous? Anticipatory self-defense is one strategy to destroy aggressors before they reach America. The United States' armed forces must meet the challenge of a new strategy.

Word Count=10,000

ENDNOTES

¹ George W. Bush, "Commencement Address to the United States Military Academy Class of 2002," 01 June 2002; available from <<http://www.whitehouse.gov/news/releases/2002/06/20020601-3.html>>; Internet; accessed 31 January 2003.

² Congress authorized the President, "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Congress. Senate and House of Representatives, Joint Resolution of the Senate and House of Representatives Authorizing the Use of Force Against Terrorism, 107th Cong., 14 September 2001; available from <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ040.107t>; Internet; accessed 31 January 2003.

³ George W. Bush, "State of the Union Address," 29 January 2002, available from <<http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html>>; Internet; accessed 31 January 2003.

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⁵ George W. Bush, The National Security Strategy of the United States (Washington, D.C.: The White House, September 2002), 6.

⁶ Russell F. Weigley, The American Way of War (Bloomington: Indiana University Press, 1977), 432-433; and Frank G. Hoffman, Decisive Force: the New American Way of War. (Westport: Praeger, 1996), 107.

⁷ In his 2002 State of the Union Address, President Bush stated, "And, second, we must prevent the terrorists and regimes who seek chemical, biological or nuclear weapons from threatening the United States and the world. ... But some governments will be timid in the face of terror. And make no mistake about it: If they do not act, America will. ... We will work closely with our coalition to deny terrorists and their state sponsors the materials, technology, and expertise to make and deliver weapons of mass destruction. ... And all nations should know: America will do what is necessary to ensure our nation's security." Bush, "State of the Union Address."

⁸ The definitions of preemptive attack, preemptive war, and preventative war can be found in Arthur F. Lykke, ed. Military Strategy: Theory and Application (Carlisle Barracks, PA: U.S. Army War College, 1993), 386.

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¹⁰ Bush, The National Security Strategy of the United States, 15.

¹¹ Summarized from Martin L. Cook, "Ethical Issues in War: An Overview," in U.S. Army War College Guide to Strategy, ed. Joseph R. Cerami and James F. Holcomb, Jr. (Carlisle Barracks, PA: Strategic Studies Institute, February 2001), 20-24.

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¹³ Cook, 20-24.

¹⁴ Summarized from James T. Johnson, Morality & Contemporary Warfare (New Haven: Yale University Press, 1999), 52.

¹⁵ Summarized from Michael Walzer, Just and Unjust Wars: A Moral Argument with Historical Examples (New York: Basic Books, 1992), 74; and William V. O'Brien, The Conduct of Just and Limited War (New York: Praeger Publishers, 1981) 132.

¹⁶ Ibid.

¹⁷ United Nations, Charter of the United Nations, available from <<http://www.un.org/Overview/charter>>; Internet; accessed 20 January 2003.

¹⁸ Sean D. Murphy, "Terrorism and the concept of 'Armed Attack' in Article 51 of the UN Charter," Harvard Journal of Law and Public Policy, 43 (Winter 2002): 42 [database on-line]; available from ProQuest; accessed 25 September 02.

¹⁹ Ibid.

²⁰ United Nations Security Council, Security Council Resolution 1373, 28 September 2001; available from <<http://www.un.org/Docs/sc/committees/1373/res1373e.pdf>>; Internet; accessed 31 January 2003.

²¹ Ibid.

²² Ibid.

²³ United Nations Security Council, Security Council Resolution 1441, 8 November 2002; available from <<http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/682/26/PDF/N0268226.pdf>>; Internet; accessed 31 January 2003.

²⁴ Jose Maria Aznar et al., "United We Stand," The Wall Street Journal, 30 January 2003; available from <<http://www.opinionjournal.com.html>>; Internet; accessed 30 January 2003.

²⁵ Sun Tzu, The Art of War, trans. Samuel B. Griffith (New York: Oxford University Press, 1963), 41, 53, 66, 84, 102 and 106.

²⁶ B.H. Liddell Hart, Strategy, (New York: Penguin Books, 1991), 326-329.

²⁷ Carl von Clausewitz, On War, trans. and ed. Michael Howard and Peter Paret (Princeton: Princeton University Press, 1984), 89.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid., 68.

³⁴ Bernard Brodie, Strategy in the Missile Age (Princeton: Princeton University Press, 1959), xiii.

³⁵ Ibid., 225 and 268.

³⁶ Ibid.

³⁷ Ibid., 176 and 268.

³⁸ Ibid., 242.

³⁹ Ibid., 240 and 241.

⁴⁰ Ibid., 392.

⁴¹ Ibid.

⁴² Walzer, 75.

⁴³ Ibid., 81.

⁴⁴ Ibid.

⁴⁵ Ibid. xii, and xiii.

⁴⁶ In 1895 following a War with China, in 1905 following the Russo-Japanese War, at Versailles, and in the Washington Naval Agreements of 1922 Japanese militarists believed military successes were traded away at the negotiating tables. Summarized from Richard Overy and Andrew Wheatcroft, The Road to War (London: Penguin Books, 1999), 258-269.

⁴⁷ Ibid., 278.

⁴⁸ Ibid., 283-284.

⁴⁹ Ibid., 284-285.

⁵⁰ Ibid., 288.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid., 292.

⁵⁴ Ibid., 293.

⁵⁵ Ibid.

⁵⁶ Ibid., 295-296.

⁵⁷ Ibid.

⁵⁸ Ibid., 296.

⁵⁹ A.J. Barker, Pearl Harbor (New York: Ballantine Books, Inc., 1969), 6-12, 32-42; and Ronald H. Spector, Eagle Against the Sun: The American War with Japan (New York: Random House, Inc., 1985), 82-84.

⁶⁰ Israel's strategic situation was summarized from Yigal Allon, The Making of Israel's Army (New York: Universe Books, 1971), 63; A. J. Barker, Six Day War (New York: Ballantine Books, Inc., 1974), 31-34; and Roy K. Flint, Peter W. Kozumplik, and Thomas J. Waraksa, The Arab-Israeli Wars, The Chinese Civil War, and The Korean War (Wayne New Jersey: Avery Publishing Group Inc., 1987), 10.

⁶¹ Israel's *casi belli* were summarized from Michael I. Handle, Israel's Political Military Doctrine (Cambridge: Harvard University Center for International Affairs, 1973), 64-65; and Roy K. Flint, Peter W. Kozumplik, and Thomas J. Waraksa, 10-11.

⁶² Trevor N. Dupuy, Elusive Victory. The Arab Israeli Wars 1947-1974 (New York: Harper & Row Publishers, Inc., 1978), 227-228.

⁶³ Dupuy, 228; and Barker, 13-15.

⁶⁴ A brief summary of events leading up to the Six Day War can be found in Chaim Herzog, The Arab-Israeli Wars: War and Peace in the Middle East from the War of Independence through Lebanon (New York: Random House Inc., 1984), 147-151; and Barker, 19-27.

⁶⁵ Dupuy, 229; and Barker, 21-26.

⁶⁶ Ibid.

⁶⁷ Gamel Abdel Nasser, quoted in Barker, 60.

⁶⁸ Herzog, 151; and Dupuy, 239.

⁶⁹ This account of the IAF' strikes on the June 5, 1967 was summarized from Baker, 60-73; Dupuy, 245-247; and Herzog, 151-153.

⁷⁰ The Israelis hoped that King Hussein would keep Jordan out of the war, but when he committed to the fight on the afternoon of the 5th the Israelis reacted. They had little choice for Israel was a mere 12 miles wide at its narrowest of points and a determined Jordanian attack could advance to Tel Aviv in a day. Israeli forces swept over most of the West Bank and by the

evening of the 4th day King Hussein was attempting to bring about a cease-fire. Summarized from accounts in Barker, 106-126; and Herzog, 167-183.

⁷¹ Barker, 131-132; and Dupuy, 319-321.

⁷² This account of Israel's success in the Sinai was summarized from Barker, 74-102; and Herzog, 154-166.

⁷³ Summarized from accounts in Barker, 106-126; and Herzog, 167-183.

⁷⁴ This account of Israel's success in the Golan was summarized Barker, 133-139; and Dupuy, 322-326.

⁷⁵ This account of the Israeli strike on Iraq's Osirak reactor was summarized from Elizer Cohen, Israel's Best Defense, The First Full Story of the Israeli Air Force, trans. Jonathon Cordis, (New York: Orion Books, 1993), 457-458; Ehud Yonay, No Margin for Error, The Making of the Israeli Air Force, (New York: Pantheon Books, 1993), 362; and Khidhir Hamza, Saddam's Bombmaker (New York: Scribner, 2000), 128-129.

⁷⁶ This account of events leading to the Israeli strike was summarized from Cohen, 446-454; and Yonay, 360-361.

⁷⁷ This account of the Israeli rationale for the air strike was summarized from Cohen, 446-447.

⁷⁸ Hamza, 333.

⁷⁹ Richard Overy and Andrew Wheatcroft, 293.

⁸⁰ Spector, 4.

⁸¹ Richard Overy and Andrew Wheatcroft, 341.

⁸² Allan R. Millet, "Assault from the sea: The development of amphibious warfare between the wars – the American, British, and Japanese experiences," in Military Innovation in the Interwar Period, ed. Williamson Murray and Allan R. Millett (New York: Cambridge University Press, 1998), 90.

⁸³ Scott D. Sagan, "The Origins of Military Doctrine and Command and Control Systems," in Planning the Unthinkable, How New Powers Will Use Nuclear, Biological, and Chemical Weapons, ed. Peter R. Lavoy, Scott D. Sagan and James J. Wirtz (Ithaca: Cornell University Press, 2000), 19.

⁸⁴ *Ibid.*, 27.

⁸⁵ *Ibid.*, 28.

⁸⁶ Robert F. Kennedy, Thirteen Days, A memoir of the Cuban Missile Crisis (New York: W.W. Norton and Company, 1971), 9 and Sagan, 20.

⁸⁷ Max Boot, The Savage Wars of Peace, Small Wars and the Rise of American Power (New York: Basic Books, 2002), 281-282.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid., 326-327.

⁹¹ The original Just War Criteria that formed the start point for this proposal can be found in Cook, 24-27.

⁹² U.S. Department of Defense. Chairman of the Joint Chiefs of Staff Manual 3122 Joint Operational Planning and Execution System Vol. I. Planning Policies and Procedures (Washington, D.C.: U.S. Government Printing Office, 14 July 2000), App G.

⁹³ Frank G. Hoffman, Decisive Force: The New American Way of War (Westport: Praeger, 1996), 110.

⁹⁴ Boot, 336-337.

⁹⁵ U.S. Department of Defense, Quadrennial Defense Review Report (Washington, D.C.: U.S. Government Printing Office, 30 September 2001), iii-iv.

⁹⁶ Bush, The National Security Strategy of the United States, 1, 6, 14, and 15.

⁹⁷ Ibid., 5.

⁹⁸ United Methodist Council of Bishops, "Just War Criteria" in Readings: Volume I War, National Security Policy, and Strategy (Carlisle Barracks, PA: Department of National Security and Strategy, 2002), 308.

⁹⁹ This account of the CIA strike in Yemen was summarized from Doyle McManus, "A U.S. License to Kill: A New Policy Permits the CIA to Assassinate Terrorists," The Los Angeles Times, 11 January 2003, sec. A, p. 1 [database on-line]; available from ProQuest; accessed 4 February 2003.

¹⁰⁰ Conrad C. Crane, Facing the Hydra: Maintaining Strategic Balance While Pursuing A Global War Against Terrorism (Carlisle Barracks, PA: Strategic Studies Institute, May 2002), 11.

¹⁰¹ U.S. Department of Defense, Quadrennial Defense Review Report, 23.

¹⁰² In 1988, a British Special Air Service (SAS) Commando Team was ordered to Gibraltar to preempt an Irish Republican Army (IRA) bomb plot. Ultimately, the SAS team trailed and killed three IRA terrorists when they thought a bomb strike was imminent. As it turned out, the terrorists were unarmed and away from their bomb laden auto when they were killed. However, it was later established that the terrorists had spirited a bomb into Gibraltar, and fully intended to detonate it. The European Court of Human Rights took the case, and in 1995, some seven years after the action, determined that the killings were unlawful. However, the court found the SAS soldiers' use of force was acceptable in response to what they believed was an

imminent threat. Meanwhile, the same court found the British government at fault for poor control of the operation. The court did not order any compensation to the families of the terrorists – who brought the case – because it was clear that the IRA personnel intended to detonate their bomb. The incident brought significant pressure and loss of face on the British Government. The Gibraltar case highlights the risks America faces in terms of justifying preemptive strikes against terrorists. Just as salient in this example is the importance of developing rules of engagement (ROE) for forces executing preemptive strikes. See “Death on the Rock: Unlawful Killing,” The Economist 336 (September 30, 1995): 67.

¹⁰³ *jus in bello* criteria can be found in Cook, 27-29.

¹⁰⁴ As part of transformation the Department of Defense has bought into the concept of network centric warfare and its ability to facilitate information dominance. As the military war-games and rehearses preemptive contingencies they must remain alert to peculiar C4ISR capabilities that may enhance the probability of success. Prioritization of C4ISR transformation initiatives that enhance the capabilities of those forces most likely to execute preemptive missions should be considered. The C4ISR network centric synergy demonstrated in the aforementioned Yemen strike may be the tip of the iceberg in the potential of these initiatives. See Michael E. O’Hanlen, “Modernizing and Transforming U.S. Forces: Alternative Paths To the Force of Tomorrow,” in QDR 2001 Strategy-Driven Choices for America’s Security, ed. Michele A. Flournoy (Washington, D.C. National Defense University Press, 2001), 299-301.

¹⁰⁵ Not every preemptive act requires military action. Agencies, like the CIA, Federal Bureau of Investigation or Coast Guard will lead in some actions with the military in support or enabling roles. Some operations will be combined. All of these cases will place a premium on inter-agency cooperation. In many cases, ambassadors and country teams will play critical roles in enabling preemption. For example as advanced force SOF teams preposition for an impending preemption, a myriad of diplomatic and legal clearances will inevitably be required. The rapid execution of these activities may be biggest stumbling block to an effective strike. The Department of Defense in conjunction with the Department of State must work to streamline these activities. The Joint Interagency concept should be fostered and expanded as necessary to facilitate preemptive endeavors. Moreover, officers committed to interagency activities will have to possess the requisite acumen and skill sets for success in such an environment.

¹⁰⁶ As part of any preemptive action America will have to provide strong evidence to justify an attack. Moreover, clear evidence will contribute to mitigating the risk that other states will attempt to mimic America’s preemptive policy as an excuse for aggression. The dilemma here is the need for operational security (OPSEC) before and after an operation balanced against the requirement for justification. While the administration will carry the water in the holistic sense, America’s armed forces could be the instrument and the primary recorder of the action. The most convincing evidence of what US forces did or did not target and what effects are achieved will likely come from military sources. Conversely, to mitigate misinformation, America will have to block access to unsympathetic foreign intelligence services. In the case of domestic and foreign media, strong efforts will be required to propagate the nation’s message.

¹⁰⁷ Non-lethal weapons are defined as “weaponry that can disable or destroy an enemy’s capability to continue the warring effort without causing significant injury, excessive destruction of personal property, or widespread environmental damage.” See David A. Morehouse, Nonlethal Weapons. War Without Death (Westport: Praeger, 1996), 12; and Barton Reppert,

"War Without Fatalities," Government Executive 33 (May 2001): 47 [database on-line]; available from ProQuest; accessed 4 February 2003.

¹⁰⁸ Non-lethal weapons function in three domains: "counter personnel, counter material and counter capability." Counter personnel weapons temporarily incapacitate or diminish the abilities of personnel. Counter material devices render equipment inoperable, while counter capability weapons involve the disabling or neutralization of infrastructure and facilities. Counter capability weapons could have powerful utility in attacks on WMD facilities. Police forces around the world have access to rubber bullets, stun guns and caltivate agents that military forces can adapt and employ. Clearly, non-lethal weapons cannot substitute for standard weaponry, when killing force is required. However, lethal force may not be required in every preemptive or preventative operation. A combination of lethal and non-lethal weapons might provide the flexibility to use the right weapon depending on circumstances. Employing non-lethal means--when possible--could pay great dividends in justifying attacks, reinforcing legitimacy and demonstrating proportionality. This would be particularly useful in preemption where the potential for collateral casualties or damage is high, and in preventative attack situations where the threat is not imminent in nature. Given the nature of terrorist organizations, the intelligence to be gathered from prisoners could be extremely useful. Thus, the temporary incapacitation and apprehension of personnel should always be considered when feasible. Moreover, evidence so obtained may prove crucial to justifying action. Consider the SAS operation in Gibraltar (see note 102), if the commandos employed non-lethal weapons they could have captured the IRA terrorists while saving their government great embarrassment, and seizing the opportunity to gain valuable intelligence. Unfortunately, despite the enormous potential of non-lethal weapons, their military use has been limited to a few successful operations in Bosnia, Haiti and Kosovo. Led by the United States Marine Corps, the Joint Non-Lethal Weapons Directorate appears to be moving in the right direction. However, its \$25 million budget limits progress. As DOD rolls up its sleeves on the details of preemption, serious consideration should be given to an expansion of its non-lethal capabilities. See John B. Alexander, Future War: Non-Lethal Weapons in Twenty-first Century Warfare (New York: St. Martin's Press, 1999) 222-225, and "Non-Lethal Weapons to Gain Relevancy in Future Conflicts," National Defense 86 (March 2002): 30 [database on-line]; available from ProQuest; accessed 4 February 2003.

¹⁰⁹ Albert Einstein, quoted in National War College Student Task Force on Combating Terrorism, Combating Terrorism in a Globalized World (Washington, D.C. National War College, 2002), vii.

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